

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**MARK ANTONIO JOHNSON, SR.,**

**Petitioner,**

**v.**

**1:15-cv-1944-WSD**

**STATE OF GEORGIA,**

**Respondent.**

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**OPINION AND ORDER**

This matter is before the Court on Magistrate Judge E. Clayton Scofield III's Final Report and Recommendation [2] ("R&R"). The R&R recommends denial of Petitioner Mark Antonio Johnson, Sr.'s ("Petitioner") construed petition for writ of coram nobis [1].

**I. BACKGROUND**

On January 20, 2015, the Court dismissed without prejudice a document the Court construed as Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254, finding that Petitioner failed to exhaust state remedies. See Johnson v. Georgia, No. 1:15-cv-185-WSD (N.D. Ga. Jan. 20, 2015) (ECF Nos. 7, 8). Petitioner appealed, and, on March 4, 2016, the Eleventh Circuit denied his appeal. See Johnson v. Georgia, No. 15-12221-F (11th Cir. March 4, 2016).

On May 28, 2015, Petitioner filed his “Discretionary Appeal Application Motion to Impeach the Presumptions of a Void Judgement [sic] and Grant Jail Time Credit as a Matter of Law.” ([1]). Petitioner states that he “re-files his motion to vacate through nature of writ of coram nobis.” (Id. at 1). The Magistrate Judge thus construed Petitioner’s filing as a petition for a writ of coram nobis under 28 U.S.C. §1651.

The Magistrate Judge found that a writ of coram nobis cannot be used to attack a state criminal judgment and sentence. He determined that, because Petitioner seeks to attack his state criminal judgment and sentence, this case must be dismissed. Petitioner did not file any objections to the R&R.<sup>1</sup>

## **II. DISCUSSION**

### **A. Legal Standard**

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge’s report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983).

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<sup>1</sup> On November 19, 2015, Plaintiff filed a motion to “Compel the Performance of the Clerk,” in which he seeks the Clerk to send him a copy of a purported “civil rights complaint pursuant to 42 U.S.C. § 1983” that Plaintiff claims his mother sent to the Court “more than nine (9) months” ago. ([4] at 1-2). Plaintiff’s motion appears to be unrelated to the pending coram nobis petition, and is denied as moot.

Petitioner did not object to the R&R, and the Court thus conducts a plain error review of the record. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

**B. Analysis**

The Court finds no plain error in the Magistrate Judge's finding that a writ of coram nobis is not available for the relief Petitioner seeks. See Llovera v. Florida, 576 F. App'x 894, 896 (11th Cir. 2014) ("[C]oram nobis is not available in federal courts as a means to attack state criminal judgments."). The Court finds no plain error in the Magistrate Judge's findings and recommendations, and this action is dismissed. See Slay, 714 F.2d at 1095.

**III. CONCLUSION**


For the foregoing reasons,

**IT IS HEREBY ORDERED** that Magistrate Judge E. Clayton Scofield III's Final Report and Recommendation [2] is **ADOPTED**.

**IT IS FURTHER ORDERED** that Petitioner's Motion to Compel the Performance of the Clerk [4] is **DENIED AS MOOT**.

**IT IS FURTHER ORDERED** that this action is **DISMISSED**.

**SO ORDERED** this 24th day of March, 2016.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE